

requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from those terms and conditions associated with the exemptive relief requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), or Rule 6e-3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes

of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Portfolio.

#### Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-19030 Filed 7-18-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 21, 1997.

A closed meeting will be held on Thursday, July 24, 1997, at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, July 24, 1997, at 3:00 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

#### Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: July 17, 1997.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97-19196 Filed 7-17-97; 11:53 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38839; File No. SR-CBOE-97-10]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Minimum Sizes for Closing Transactions, Exercises, and Responses to Requests for Quotes in FLEX Equity Options

July 15, 1997.

#### I. Introduction

On February 21, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to amend certain rules pertaining to FLEX Equity Options.

Notice of the proposal was published for comment and appeared in the **Federal Register** on May 16, 1997.<sup>3</sup> No comment letters were received on the proposed rule change, although the CBOE submitted a letter with additional information in support of its proposal.<sup>4</sup> This order approves the Exchange's proposal.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 38607 (May 9, 1997), 62 FR 27083.

<sup>4</sup> See Letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated April 21, 1997 ("CBOE Letter").

## II. Description of the Proposal

The purpose of the proposed rule change is to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

Currently, Rule 24A.4(a)(4)(iii) imposes a 100 contract minimum on all transactions in FLEX Equity Options unless the transaction is for the entire remaining position in the account. According to the CBOE, based on its experience to date with FLEX Equity Options, it appears that the existing 100 contract minimums are too large to accommodate the needs of certain firms and their customers.<sup>5</sup> These firms may purchase 100 or more FLEX Equity Options in an opening transaction for a single firm account in which more than one of the firm's clients have an interest. If one of these clients wants to redeem its investment in the account, the firm likely will want to engage in a closing or exercise transaction in order to reduce the account's position in those FLEX Equity Options by the number being redeemed. Thus, if the redeeming client's interest is less than 100 FLEX Equity Options and does not represent the total remaining position in the account, Rule 24A.4(a)(4)(iii) as it stands presently, prevents the firm from closing or exercising positions of this size. The CBOE states that this places its market at a competitive disadvantage to the over-the-counter ("OTC") customized equity market where no such limitation exists.<sup>6</sup>

The Exchange believes that the proposed rule change to Rule 24A.4(4)(iii) would remedy the situation described above, by permitting an order to close or exercise as few as 25 FLEX Equity Option contracts. The corresponding change to Rule 24A.4(a)(iv), which governs the minimum size for FLEX Equity Quotes that may be entered in response to Requests for Quotes, is necessary in order to provide the liquidity needed to facilitate the execution of closing orders between 25 and 99 FLEX Equity Option contracts that would be permitted by the

<sup>5</sup> The Exchange notes that the existing customer base for FLEX Equity Options includes both institutional investors, in particular mutual funds, money managers and insurance companies, and high net worth individuals who meet the "sophisticated investor" criteria applied to various clients by Exchange member firms. See CBOE Letter, *supra* note 4.

<sup>6</sup> *Id.*

proposed amendment to Rule 24A.4(4)(iii).<sup>7</sup>

The Exchange notes that the Exchange would issue a circular that (1) describes the new rule; and (2) reminds all members and member firms of their continued responsibility to insure that FLEX Equity Options are utilized only by sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size.<sup>8</sup>

The Exchange believes by providing firms and their customers greater flexibility to trade FLEX Equity options by lowering from 100 to 25 the minimum number of contracts required for a closing transaction, for exercises, and for FLEX Quotes responsive to a Request for Quotes, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 by removing impediments to and perfecting the mechanism of a free and open market in securities and otherwise serving to protect investors and the public interest.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>9</sup> Further, for the reasons discussed below, the Commission believes that consistent with 6(b)(5) of the Act, the proposal should facilitate transactions in securities in FLEX Equity Options consistent with investor protection and the public interest.<sup>10</sup>

The Commission believes that the Exchange's proposal to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes reasonably addresses the Exchange's desire to meet the demands of sophisticated investors, portfolio managers and other institutional investors who may want to use FLEX

<sup>7</sup> The Commission notes that the minimum size for an opening transaction in a request for quotes is 250 contracts for any FLEX series in which there is no open interest, and 100 contracts in any currently opened FLEX series. See CBOE Rule 24A.4(a)(4) (ii) and (iii).

<sup>8</sup> See CBOE Letter, *supra* note 4.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Equity Options, but find the minimum size requirements for closing transactions too restrictive for their investment needs and may therefore choose to use the OTC market. As previously noted by the Commission, the benefits of the Exchanges' FLEX options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of The Options Clearing Corporation for all contracts traded on the Exchange.<sup>11</sup>

The Commission notes that market participants wanting to execute an opening transaction in a particular series of FLEX Equity Options will still have to meet the 250 or 100 minimum contract requirement.<sup>12</sup> This should help to ensure that transactions in FLEX Equity Options remain of substantial size and, therefore, the product is geared to an institutional, rather than a retail, market. In originally approving FLEX Equity Options, the Commission stated that the minimum value sizes for opening transactions in FLEX Equity Options are designed to appeal to institutional investors, and it is unlikely that most retail investors would be able to engage in options transactions at that size.<sup>13</sup>

The Commission notes that, in approving the proposal, adequate surveillance guidelines should be in place to ensure that only sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size are utilizing this product. The Commission's staff has reviewed CBOE's surveillance program and believes it provides a reasonable framework in which to monitor such investor open interest.

The Commission requests, however, that the Exchange provide a report to the Commission's Division of Market Regulation describing the nature of investor participation (*i.e.*, retail vs. institutional) in FLEX Equity Options for one year from the implementation date for the rule change.<sup>14</sup> If the

<sup>11</sup> See Securities Exchange Act Release No. 36841 (February 14, 1996) ("Original FLEX Equity Option Approval Order").

<sup>12</sup> See *supra* note 7.

<sup>13</sup> See Original FLEX Equity Option Approval Order, *supra* note 11.

<sup>14</sup> The Commission notes that the CBOE had previously committed to providing the Commission with a report on the usage of FLEX Equity Options after the first year of trading. Because that report is due shortly and, the changes adopted herein could potentially change the nature of investor

Exchange determines in the interim that the proposed rule change has resulted in a pattern of retail investor participation in FLEX Equity Options, it should notify the Commission's Division of Market Regulation to determine if the minimum closing transaction sizes should be restored to the original levels.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-CBOE-97-10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-19031 Filed 1-18-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38837; File No. SR-CBOE-97-24]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to a Reduction of the Quorum Requirements in Uncontested Elections

July 14, 1997.

#### I. Introduction

On May 21, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the CBOE's Constitution to reduce the quorum required in uncontested elections. On June 4, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

participation, the Commission requests that the Exchange update its report one year from the implementation date for this rule change.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30.3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Debora E. Barnes, Senior Attorney, CBOE, to Debra Flynn, Attorney, Division of Market Regulation, SEC, dated June 3, 1997. In Amendment No. 1, the CBOE replaced all references to "Constitution" change with "Rule" change, clarified the definition of "uncontested elections" by deleting the phrase "for example," and clarified the language in Sections 3.6 and 3.7 of the Constitution.

The proposed rule change was published for comment in the **Federal Register** on June 13, 1997.<sup>4</sup> No comments were received on the proposal. This Order approves the proposal.

#### II. Description of the Proposal

The Exchange conducts an annual election and special meetings of its membership.<sup>5</sup> Currently, at all meetings of Exchange members, including elections, a majority of the membership entitled to vote constitutes a quorum. The Exchange is proposing to amend Section 3.6 of the Constitution to reduce the quorum requirement, in uncontested elections only, from a majority to one-third of the members entitled to vote.<sup>6</sup> Uncontested elections are elections in which each candidate is running for office unopposed. If any candidate for office is opposed, the entire election would be considered contested, and would require a majority for a quorum.

The Exchange is also making a change to Section 3.7 of the Constitution to clarify that this Section governs voting by members on issues other than elections. The quorum requirement will remain a majority of the members entitled to vote on issues arising pursuant to Section 3.7.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission believes that the proposal, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of

<sup>4</sup> See Securities Exchange Act Release No. 38723 (June 6, 1997), 62 FR 32393 (June 13, 1997).

<sup>5</sup> At annual election meetings, the CBOE membership votes for a slate of candidates proposed by the Nominating Committee for expiring terms and vacancies on the Board of Directors and certain other Exchange Committees, such as the Nominating and Modified Trading System Committees.

<sup>6</sup> In connection with the proposed amendment to the Constitution, the Election Committee stated that its policy under the reduced quorum proposal, if approved, would be to collect ballots and proxies in-person for three trading sessions prior to any meeting at which a vote would be conducted. Any change to this Election Committee policy would need to be approved by the Board of Directors and submitted to the Commission pursuant to Rule 19b-4.

<sup>7</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that reducing the quorum required in uncontested elections should improve the efficiency of the CBOE's election process. A quorum requirement of one-third of the members entitled to vote should demand less of the CBOE's resources than the current majority requirement which, at times, has required considerable Exchange staff time and resources. The Commission believes that the proposed rule change should maximize the use of Exchange resources.

In addition, the Commission notes that the existing quorum requirement will be reduced only for uncontested elections. The Commission believes that Exchange members should be encouraged strongly to vote in contested elections and therefore, it would be inappropriate to reduce the quorum requirement for contested elections. The Commission further believes that in circumstances in which even one nominated candidate is opposed, the more rigid quorum requirement is appropriate to ensure that the Exchange's membership is compelled to consider carefully the candidates.

Finally, the Commission notes that the proposed rule was overwhelmingly approved by the Exchange's membership at the CBOE's most recent Annual Election Meeting, held on December 11, 1996. The membership's approval of the proposal indicates that CBOE's members expect the proposed reduction of the quorum requirement in uncontested elections will not affect adversely either the operations of the Exchange or the membership's interests.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-97-24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-19032 Filed 7-18-97; 8:45 am]

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).